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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SIMON THORNTON, Defendant and Appellant.	A156521 (Mendocino County Super. Ct. No. 11-18259)

Simon Thornton appeals from a post-judgment order after our limited remand to the trial court to place additional evidence on the record for a future youth parole suitability hearing pursuant to Penal Code section 3051 and *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*). The proceedings on remand are complete. Defendant's court-appointed counsel has filed a brief seeking our independent review of the record, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, to determine whether there are any arguable issues for review. Defendant has been informed of his right to file supplemental briefing, and he has not done so. After our independent review of the record, we find no errors or other issues requiring further briefing, and we affirm.

Background

We summarize the procedural history of this case from our earlier opinion in *People v. Thornton* (A151361 [nonpub. opn.]) filed June 27, 2018 (2018 Opinion):

"On July 20, 2011, at a campsite at Lake Mendocino, Thornton and his codefendant Marvin Douglas Johnson murdered Joe Litteral and attempted the murder of

Brandon Haggett, who was shot and seriously wounded. The facts are summarized in our opinion from Thornton's first appeal (A136124). (*People v. Johnson and Thornton* (2016) 243 Cal.App.4th 1247, 1252-1265.)

"Thornton was found guilty of murder, attempted murder and firearm use enhancements in June 2012, and he was sentenced on July 20, 2012 to state prison for 25 years to life plus nine years.

"Thornton appealed, and we conditionally reversed his conviction for first degree murder and remanded the matter for a new trial or for the prosecution to elect a conviction of murder in the second degree to be entered against Thornton. Eventually the district attorney elected not to retry Thornton, and judgment was entered against him for second degree murder. In May 2017, Thornton was resentenced to state prison for 15 years to life plus nine years. Thornton was 22 years old at the time he committed the crimes." (2018 Opinion, *supra*, at pp. 1-2.)

Thornton did not appeal the substance of his sentence. Instead, his requested relief was a limited remand to place additional evidence on the record for a future youth parole suitability hearing. We granted that relief. As we explained in our 2018 Opinion:

"Section 3051, effective January 2014, provides for youth offender parole hearings for offenders sentenced to prison for crimes committed when they were 25 years of age or younger.[1] Section 3051 applies retrospectively to all eligible youth offenders, without regard to the date of conviction. (*Franklin*[, *supra*, 63 Cal.4th] at p. 278.)

"*Franklin* elaborated on the need to develop a contemporaneous record about the offender. 'The Legislature has declared that "[t]he youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release" (§ 3051, subd. (e)) and that in order to provide such a meaningful opportunity, the Board [of Parole Hearings] "shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and

[1] "When Thornton was resentenced in May 2017, section 3051 applied to offenders who committed crimes when they were under 23 years of age. (See *Franklin*, *supra*, 63 Cal.4th at p. 277, citing Stats. 2015, ch. 471.)" (2018 Opinion at p. 2, fn. 2.)

increased maturity" (§ 4801, subd. (c)).'[2] (*Franklin, supra*, 63 Cal.4th at p. 283.) Our Supreme Court in *Franklin* wrote that 'the statutes also contemplate that information regarding the juvenile offender's characteristics and circumstances at the time of the offense will be available at a youth offender parole hearing to facilitate the Board's consideration. For example, section 3051, subdivision (f)(2) provides that "[f]amily members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime . . . may submit statements for review by the board." Assembling such statements "about the individual before the crime" is typically a task more easily done at or near the time of the . . . offense rather than decades later when memories have faded, records may have been lost or destroyed, or family or community members may have relocated or passed away. In addition, section 3051, subdivision (f)(1) provides that any "psychological evaluations and risk assessment instruments" used by the Board in assessing growth and maturity "shall take into consideration . . . any subsequent growth and increased maturity of the individual." Consideration of "subsequent growth and increased maturity" implies the availability of information about the offender when he was a juvenile.' (*Id.* at pp. 283-284.)

"In *Franklin*, the court thus granted a limited remand so that if the trial court determined that Franklin had not had a sufficient opportunity to do so, he could place on the record documents, evaluations or testimony that might be relevant to his eventual youth offender parole hearing, with the 'goal . . . to provide an opportunity for the parties to make an accurate record of the . . . offender's characteristics or circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to "give great weight to" youth related factors (§ 4801, subd. (c))' in determining whether defendant should be paroled. (*Franklin, supra*, 63 Cal.4th at p. 284.)" (2018 Opinion at pp. 2-3.)

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[2] "Section 3051, subdivision (e) now refers to the culpability of 'youth' rather than 'juveniles.' " (2018 Opinion at p. 2, fn. 3.)

We concluded in our 2018 Opinion that Thornton was not afforded a sufficient opportunity on account of his counsel's arguably ineffective assistance at resentencing, and that a limited remand was warranted under the "very unusual procedural circumstances of this case." (2018 Opinion at p. 4.)

As we noted, "Thornton was originally sentenced in 2012, before section 3051 was enacted, and before *Franklin*. The 2012 probation reports obviously were not prepared with a youthful offender parole hearing in mind" in the future. (2018 Opinion at p. 4.[3])

For the 2017 resentencing, the trial court referred Thornton's case to the probation department, but only for a memorandum concerning custody credits. In Thornton's counsel's sentencing memorandum, she mentioned Thornton's "significant history of mental health issues," writing:

" 'Defendant was just 22 years of age at the time of the offense; Defendant has a significant history of mental health issues, including suicide attempts, 5150 commitments, voluntary commitments, and out of home placements through Pittsburg Mental Health in Contra Costa County. (In support of this last statement, Counsel has reviewed hundreds of pages of mental health documents provided from Contra Costa County that support this representation) . . . .' " (2018 Opinion at p. 5.)

As we found, "None of these 'hundreds of pages of mental health documents' are part of the record, and counsel did not elaborate on the issue at the resentencing hearing. Nor does the probation report from 2012 have much to say on the subject. Under the heading 'SOCIAL INFORMATION' 'Medical/Psychological' there is a brief description, but all in Thornton's own words, characterizing his psychological diagnoses and his then mental state. It is nine lines long." (2018 Opinion at p. 5.)

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[3] "Thornton was represented during the trial and 2012 sentencing by a different attorney from the attorney who represented him at the 2017 resentencing." (2018 Opinion at p. 4, fn. 5.)

We remanded the matter "for the limited purpose of permitting the parties to present evidence relevant to Thornton's future parole hearing. (*Franklin, supra,* 63 Cal.4th 261.)" (2018 Opinion at p. 6.)

Proceedings on the Second Remand

On January 11, 2019, counsel filed a document entitled "Defendant's Sentencing Memorandum for his Subsequent Parole Hearing Pursuant to *People v. Franklin* (2016) 63 Cal.4th 261," (January 11 memorandum) along with an exhibit containing a disk described as containing "nearly 1900 pages" of mental health records. The January 11 memorandum was four pages long and briefly listed "Mitigating Factors" referred to in probation reports that were already on file in the case. It quoted from and cited to pages in those probation reports. Except for the introductory reference that the "case is before the Court to enable him to provide evidence for use at his future 'youthful offender' parole hearing" under *Franklin,* and the similar reference in the conclusion, and the reference to attaching mental health records, the January 11 memorandum itself was in substance the same as had been filed at Thornton's 2017 sentencing. The January 11 memorandum did not describe or analyze the mental health records in any detail.

At the hearing on January 11, 2019, the prosecutor objected to the new sentencing memorandum (but not the mental health records themselves) as beyond the evidentiary record that was to be presented at the Franklin hearing, and the trial court agreed. The court stated that the purpose of the *Franklin* hearing was "to make the evidentiary record as inclusive as it could have been at the time of sentencing with the records, especially the mental health records of the defendant and not to allow rearguing circumstances in mitigation and circumstances in aggravation." Instead, the trial court said that it would permit defense counsel to file a declaration with the mental health records attached. This declaration (Aaron Declaration) was filed on January 14, 2019. The Aaron Declaration explains that the mental health records (described as approximately 1,866 pages of documents) are the "mental health documents" described by Thornton's prior counsel at the 2017 sentencing. It states that these records contain information regarding Thornton's "psychiatric crises, his attempts to obtain treatment, his prescriptions, his

hospital and clinic notes, his suicide attempts and ideations, and so forth." This description is in substance what was stated about the mental health records in the January 11 memorandum.

The trial court permitted the Aaron Declaration to be filed, struck the January 11 memorandum, and ordered that Exhibit 1 to the January 11 memorandum with the mental health records be attached to the Aaron Declaration.

REVIEW

We have reviewed the record on appeal for any arguable issues. Defendant was effectively represented by counsel in connection with the *Franklin* hearing. Defendant had an opportunity to make a complete evidentiary record. The January 11 memorandum that was stricken did not contain any evidence that was not already part of the record.

We conclude there are no arguable issues within the meaning of *People v. Wende, supra*, 25 Cal.3d 436. The order is affirmed.

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Miller, J.

We concur:

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Kline, P.J.

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Stewart, J.

A156521, *People v. Thornton*